

# UNOFFICIAL COPY

288450.001 (REAL)

7628972 DI CX

This instrument was prepared by and, upon recording should be returned to:

96779863

Kelly M. Wrenn, Esq.  
Ballard Spahr Andrews & Ingersoll  
555 13th Street, NW, Suite 900 East  
Washington, DC 20004-1112

DEPT-01 RECORDING \$91.00  
T#0012 TRAN 2331 10/11/96 11:29:00  
#1698 # CG \*-96-779863  
COOK COUNTY RECORDER

STATE OF ILLINOIS )  
COUNTY OF COOK )

## MORTGAGE AND SECURITY AGREEMENT

9/10  
13

THIS MORTGAGE AND SECURITY AGREEMENT (this "Instrument"), is made as of the 10th day of October, 1996 by and between BELHAVEN CONVALESCENT CENTER, INC., a Maryland corporation, (the "Mortgagor"), whose address is % Olivia S. Byrne, 11921 Rockville Pike, Third Floor, Rockville, Maryland 20852, and GMAC COMMERCIAL MORTGAGE CORPORATION, a California corporation (the "Mortgagee"), whose address is 650 Dresher Road, P.O. Box 1015, Horsham, Pennsylvania 19044-8015.

### RECITALS:

A. Mortgagor is indebted to the Mortgagee for money loaned in the principal sum of TWELVE MILLION FIVE HUNDRED FIFTY THOUSAND AND NO/100 Dollars (\$12,550,000.00) (the "Loan"), as is evidenced by a certain Promissory Note of even date herewith from the Mortgagor, payable to the order of Mortgagee in installments of principal and/or interest thereon, such final installment being due on October 10, 1998, as may be extended pursuant to the terms of the Note (defined below) and is evidenced by that certain Loan Agreement of even date herewith by and among Mortgagor, Mortgagee and Susan S. Haskell.

B. As a condition precedent to making the Loan, the Mortgagee has required that the Mortgagor execute this Instrument as security for the Loan and the other Indebtedness (as hereinafter defined).

### AGREEMENT

NOW, THEREFORE, for and in consideration of the Indebtedness, and to secure the prompt payment thereof, Mortgagor does hereby irrevocably grant, bargain, sell, convey, assign, transfer, mortgage, pledge and set over unto Mortgagee, its

BOX 333-CTT

96779863

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

successors and assigns, and grants to Mortgagee a security interest in, and to the Mortgaged Property.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Mortgagee, its successors and assigns forever, subject however to the terms and conditions herein:

PROVIDED, HOWEVER, that if the Mortgagor shall pay to the Mortgagee the entire Indebtedness, at the times and in the manner stipulated herein, in the Note and in the other Loan Documents, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall cause all other obligated parties to, keep, perform, and observe all and singular the covenants and promises herein, in the Note and in each of the other Loan Documents to be kept, performed, and observed, all without fraud or delay, then this Mortgage, and all the properties, interests, and rights hereby granted, bargained, and sold shall cease, terminate, and be void, but shall otherwise remain in full force and effect.

AND the Mortgagor and Mortgagee covenant and agree as follows:

1. **DEFINITIONS.** The following terms, when used in this instrument (including when used in the above recitals), shall have the following meanings:

(a) **"Accounts"** means any rights of Mortgagor arising from the operation of the Nursing Home to payment for goods sold or leased or for services rendered, not evidenced by an Instrument, including, without limitation, (i) all accounts arising from the operation of the Nursing Home and (ii) all rights to payment from Medicaid or Medicare programs, or similar state or federal programs, boards, bureaus or agencies and rights to payment from patients, residents, private insurers, and others arising from the operation of the Nursing Home, including rights to payment pursuant to Reimbursement Contracts. Accounts shall include the proceeds thereof (whether cash or noncash, moveable or immoveable, tangible or intangible) received from the sale, exchange, transfer, collection or other disposition or substitution thereof.

(b) **"Appurtenant Rights"** means all air rights, development rights, zoning rights, easements, rights-of-way, strips and gores of land, vaults, streets, roads, alleys, tenements, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter appurtenant to, or used or useful in connection with, or located on, under or above the Land, or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

remainders whatsoever, in any way belonging, relating or appertaining to the Land, or any part thereof.

(c) **"Collateral Agreement"** means those escrow agreements described in Section 5.

(d) **"Environmental Permit"** means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(e) **"Equipment"** means all beds, linen, televisions, carpeting, telephones, cash registers, computers, lamps, glassware, rehabilitation equipment, restaurant, restaurant and kitchen equipment, and other fixtures and equipment of Mortgagor located on, attached to or used or useful in connection with the Property or the Nursing Home; provided, however, that with respect to any items which are leased and not owned by Mortgagor, the Equipment shall include the leasehold interest only of Mortgagor together with any options to purchase any of said items and any additional or greater rights with respect to such items which Mortgagor may hereafter acquire.

(f) **"Event of Default"** means the occurrence of any event listed in Section 18.

(g) **"Fixtures"** means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; and exercise equipment.

(h) **"General Intangibles"** means all intangible personal property of Mortgagor arising out of or connected with the Land or the Nursing Home (other than Accounts, Rents, Instruments, Inventory, and Permits), including, without limitation, things in action, contract rights and other rights to payment of money.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(i) **"Governmental Authority"** means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

(j) **"Hazardous Materials"** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Hazardous Materials Law.

(k) **"Hazardous Materials Laws"** means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Mortgagor or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, and their state analogs.

(l) **"Impositions"** and **"Imposition Deposits"** are defined in Section 6.

(m) **"Improvements"** means all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including any future replacement and additions and including the Nursing Home.

(n) **"Indebtedness"** means the principal of, interest on, and all other amounts due at anytime under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security of this Instrument under Section 9.

(o) **"Instruments"** means all instruments, chattel paper, documents or other writings obtained by Mortgagor from or in connection with the operation of the Land or the Nursing Home

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

(including without limitation, all ledger sheets, computer records and printouts, data bases, programs, books of account and files of Mortgagor relating thereto).

(p) "Inventory" means all inventories of food, beverages and other comestibles held by Mortgagor for sale or use at or from the Land or the Nursing Home, and soap, paper supplies, medical supplies, drugs and all other such goods, wares and merchandise held by Mortgagor for sale to or for consumption by residents, guests or patients of the Land or the Nursing Home and all such other goods returned to or repossessed by Mortgagor.

(q) "Land" means the land described in Exhibit "A" attached hereto and incorporated herein.

(r) "Leases" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property and all modifications, extensions or renewals thereof.

(s) "Loan Agreement" means that certain Loan Agreement of even date herewith by and among Mortgagor, Mortgagee and Susan S. Haskell.

(t) "Loan Documents" means the Note, this Instrument, all guaranties, all Collateral Agreements, O&M Programs, and any other documents now or in the future executed by Mortgagor, any guarantor or any other person in connection with the Loan evidenced by the Note, as such documents may be amended from time to time.

(u) "Mortgaged Property" means all of Mortgagor's present and future right, title and interest in and to all of the following:

- (1) the Land;
- (2) all Appurtenant Rights;
- (3) all Equipment;
- (4) all Improvements;
- (5) all Fixtures;
- (6) all Accounts;
- (7) all General Intangibles;
- (8) all Permits (to the extent assignable);
- (9) all Instruments;
- (10) all Inventory;
- (11) all Reimbursement Contracts;
- (12) all Rents;
- (13) the Personalty;
- (14) all Leases;
- (15) all Proceeds;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

- (16) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property entered into by Mortgagor now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (17) all Imposition Deposits;
- (18) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated); and
- (19) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

(v) "Mortgagee" means the entity identified as "Mortgagee" in the first paragraph of this Instrument, or any subsequent holder of the Note.

(w) "Mortgagor" means all persons or entities identified as "Mortgagor" in the first paragraph of this instrument, together with their successors and assigns.

(x) "Note" means the note evidencing the Indebtedness, including all schedules, riders, allonges, addenda or amendments together with any renewals, replacements or extensions thereof.

(y) "Nursing Home" means the nursing home facility known as "Belhaven Convalescent Center," a 221-bed licensed skilled nursing facility located on the Land, together with any other general or specialized care facilities, if any (including any Alzheimer's care unit, subacute, and any assisted care living facility), now or hereafter operated on the Land.

(z) "O&M Program" is defined in Section 15.

(aa) "Permits" means all licenses, permits and certificates used or necessary in connection with the ownership, operation, use or occupancy of the Property and/or the Nursing Home, including, without limitation, business licenses, state health department licenses, food service licenses, licenses to conduct business, certificates of need and all such other permits, licenses and rights, obtained from any governmental, quasi-governmental or private person or entity whatsoever concerning ownership, operation, use or occupancy.

96779863

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(ab) **"Personalty"** means all furniture, furnishings, Equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements.

(ac) **"Proceeds"** means all awards, payments, earnings, royalties, issues, profits, liquidated claims, and proceeds (including proceeds of insurance and condemnation or any conveyance in lieu thereof) from the sale, conversion (whether voluntary or involuntary), exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the Mortgaged Property.

(ad) **"Reimbursement Contracts"** shall mean all third party reimbursement contracts for the Nursing Home which are now or hereafter in effect with respect to patients qualifying for coverage under the same, including Medicaid and Medicare, and any successor program or other similar reimbursement program and private insurance agreements.

(ae) **"Rents"** means all rent and other payments of whatever nature from time to time payable pursuant to the Leases (including, without limitation, rights to payments earned under leases for space in the Nursing Home for the operation of ongoing retail businesses such as newsstands, barbershops, beauty shops, physicians' offices, pharmacies and specialty shops).

(af) **"Taxes"** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(ag) **"Transfer"** means (A) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (B) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law); (C) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest or corporate stock; (D) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (E) the merger, dissolution, liquidation, or

96779863

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

consolidation of a legal entity or the reconstitution of one type of legal entity into another type of legal entity. "Transfer" does not include (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument or (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under of the Federal Bankruptcy Code. For purposes of defining the term "Transfer", the term "partnership" shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

2. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Mortgagor hereby grants to Mortgagee a security interest in the UCC Collateral. Mortgagor shall execute and deliver to Mortgagee, upon Mortgagee's request, financing statements, continuation statements and amendments, in such form as Mortgagee may require to perfect or continue the perfection of this security interest. Mortgagor shall pay all filing costs and all costs and expenses of any record searches for financing statements that Mortgagee may require. Without the prior written consent of Mortgagee, Mortgagor shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Mortgagee may exercise its remedies against the UCC Collateral separately or together and in any order, without in any way affecting the availability of Mortgagee's other remedies under and/or under applicable law.

3. **LEASES.** Mortgagor shall not, without the prior written consent and approval of Mortgagee, enter into any Lease (except for admission of Nursing Home patients or residents), or enter into or permit any management agreement of or affecting any part of the Mortgaged Property.

4. **DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.**

(a) Mortgagor shall deposit with Mortgagee on the day monthly installments of principal and/or interest, or both, are due under the Note (or on another day designated in writing by Mortgagee), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Mortgagee the entire sum required to pay, when due (1) to the extent applicable, the yearly water and sewer charges which may be levied on all or any part of the Mortgaged Property, (2) the premiums for fire and

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

other hazard insurance, rent loss insurance and such other insurance as Mortgagee may require under the Loan Agreement, (3) the yearly Taxes, and (4) amounts for other charges and expenses which Mortgagee at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Mortgagee's interests, all as reasonably estimated from time to time by Mortgagee. The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the "Imposition Deposits". The obligations of Mortgagor for which the Imposition Deposits are required are collectively referred to in this Instrument as "Impositions". The amount of the Imposition Deposits shall be sufficient to enable Mortgagee to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Mortgagee shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Mortgagee are held for the purpose of paying property taxes, insurance premiums and each other obligation of Mortgagor for which Imposition Deposits are required. Any waiver by Mortgagee of the requirement that Mortgagor remit Imposition Deposits to Mortgagee may be revoked by Mortgagee, in Mortgagee's discretion, at any time upon notice to Mortgagor.

(b) Imposition Deposits shall be held in an institution (which may be Mortgagee, if Mortgagee is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. Mortgagee shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Mortgagee shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless applicable law requires, Mortgagee shall not be required to pay Mortgagor any interest, earnings or profits on the Imposition Deposits. Mortgagor hereby pledges and grants to Mortgagee a security interest in the Imposition Deposits as additional security for all of Mortgagor's obligations under this Instrument and the other Loan Documents. Any amounts deposited with Mortgagee under this Section 4 shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Mortgagee for that purpose under Section 4(e).

(c) If Mortgagee receives a bill or invoice for an Imposition, Mortgagee shall pay the Imposition from the Imposition Deposits held by Mortgagee. Mortgagee shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Mortgagee. Mortgagee may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(d) If at any time the amount of the Imposition Deposits held by Mortgagee for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Mortgagee plus one-sixth of such estimate, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Mortgagee for payment of a specific Imposition is less than the amount reasonably estimated by Mortgagee to be necessary plus one-sixth of such estimate, Mortgagor shall pay to Mortgagee the amount of the deficiency within 15 days after notice from Mortgagee.

(e) If an Event of Default has occurred and is continuing, Mortgagee may apply any Imposition Deposits, in any amounts and in any order as Mortgagee determines, in Mortgagee's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Mortgagee shall refund to Mortgagor any Imposition Deposits held by Mortgagee.

5. **COLLATERAL AGREEMENTS.** Mortgagor shall deposit with Mortgagee any amounts required by any other agreement or agreements between Mortgagor and Mortgagee which provide for the establishment of any other fund, reserve or account, at the times required by each such agreement, and shall perform all other obligations as and when required by each such agreement.

6. **APPLICATION OF PAYMENTS.** If at any time Mortgagee receives, from Mortgagor or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Mortgagee may apply that payment to amounts then due and payable in any manner and in any order determined by Mortgagee, in Mortgagee's discretion. Neither Mortgagee's acceptance of an amount which is less than all amounts then due and payable nor Mortgagee's application of such payment in the manner authorized in the immediately preceding sentence shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Mortgagor's obligations under this Instrument and the Note shall remain unchanged.

7. **COMPLIANCE WITH LAWS.** Mortgagor shall comply with all laws, ordinances, regulations and requirements of any governmental body or authority and all recorded, lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of Improvements, zoning and land use, and Leases. Mortgagor shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 7. Mortgagor shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger occupants or visitors, result in

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Mortgagee's interest in the Mortgaged Property. Mortgagor represents and warrants to Mortgagee that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

8. **USE OF PROPERTY.** Unless required by applicable law, Mortgagor shall not (a) except for any change in use approved by Mortgagee, allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, (b) convert any part of the Nursing Home to commercial use, or (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property.

9. **PROTECTION OF MORTGAGEE'S SECURITY.**

(a) If Mortgagor fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Mortgagee's security or Mortgagee's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option may make such appearances, disburse such sums and take such actions as Mortgagee reasonably deems necessary to perform such obligations of Mortgagor and to protect Mortgagee's interest, including (1) disbursement of fees and out of pocket expenses of attorneys, accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance coverages required under the Loan Agreement, and (4) payment of amounts which Mortgagor has failed to pay under Section 12.

(b) Any amounts disbursed by Mortgagee under this Section 9 which in no event shall exceed \$1,000,000.00 or under any other provision of this Instrument that treats such disbursement as being made under this Section 9, shall be added to, and become part of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "Default Rate", as defined in the Note.

(c) Nothing in this Section 9 shall require Mortgagee to incur any expense or take any action.

10. **INSPECTION.** Mortgagee, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## 11. BOOKS AND RECORDS.

(a) Mortgagor shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Mortgagee's request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the results of the operation of the Nursing Home, and copies of all written contracts, Leases (if any), and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases (if any), and other instruments shall be subject to examination and inspection at any reasonable time by Mortgagee.

(b) If an Event of Default has occurred and is continuing, Mortgagor shall deliver to Mortgagee upon written demand all books and records relating to the Nursing Home or its operation.

(c) Mortgagor authorizes Mortgagee to obtain a credit report on Mortgagor at any time.

## 12. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 12(c) and Section 12(d), Mortgagor shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 12(c), Mortgagor shall pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added.

(c) As long as no Event of Default has occurred and is continuing, Mortgagor shall not be obligated to pay Taxes, insurance premiums or any other individual Imposition to the extent that Imposition Deposits are held by Mortgagee for the purpose of paying that specific Imposition. If an Event of Default exists, Mortgagee may exercise any rights Mortgagee may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable.

(d) Mortgagor, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Mortgagor notifies Mortgagee of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) if requested by Mortgagee, Mortgagor deposits with Mortgagee reserves sufficient to pay the contested Imposition,

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

and (4) Mortgagor furnishes whatever security is required in the proceedings or is reasonably requested by Mortgagee, which may include the delivery to Mortgagee of the reserves established by Mortgagor to pay the contested Imposition, as additional security.

(e) Mortgagor shall promptly deliver to Mortgagee a copy of all notices of, and invoices for, Impositions, and if Mortgagor pays any Imposition directly, Mortgagor shall promptly furnish to Mortgagee receipts evidencing such payments.

**13. LIENS; ENCUMBRANCES.** Mortgagor acknowledges that the existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance on the Mortgaged Property or on certain ownership interests in Mortgagor, whether voluntary, involuntary or by operation of law, is a "Transfer" which constitutes an Event of Default as provided under Section 18 except as set forth in the Loan Agreement

**14. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.** Mortgagor (a) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Nursing Home, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, (d) shall keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, (e) shall provide for professional management of the Mortgaged Property by a manager satisfactory to Mortgagee under a contract approved by Mortgagee in writing, and (f) shall give notice to Mortgagee of and, unless otherwise directed in writing by Mortgagee, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Mortgagee's security or Mortgagee's rights under this Instrument. Mortgagor shall not (and shall not permit any other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except in connection with the replacement of tangible Personalty.

**15. ENVIRONMENTAL HAZARDS.**

(a) Except for matters covered by a written program of operations and maintenance approved in writing by Mortgagee (an "O&M Program") or matters described in Section 18(b), Mortgagor shall not cause or permit any of the following:

- (1) The presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Hazardous Materials in, on or under the Mortgaged Property or any other property of Mortgagor that is adjacent to the Mortgaged Property

- (2) The transportation of any Hazardous Materials to, from, or across the Mortgaged Property;
- (3) Any occurrence or condition on the Mortgaged Property or any other property of Mortgagor that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or
- (4) Any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Mortgagor that is adjacent to the Mortgaged Property.

The matters described in clauses (1) through (4) above are referred to collectively in this Section 15 as "Prohibited Activities or Conditions".

(b) "Prohibited Activities and Conditions" shall not include the safe and lawful use and storage of quantities of (1) pre-packaged supplies, medical waste, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable Nursing Homes, (2) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by occupants of the Nursing Home; and (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Mortgagor shall take all appropriate steps (including the inclusion of appropriate provisions in any Leases approved by Mortgagor which are executed after the date of this Instrument) to prevent its employees, agents, contractors, tenants and occupants of the Nursing Home from causing or permitting any Prohibited Activities or Conditions.

(d) If an O&M Program has been established with respect to Hazardous Materials, Mortgagor shall comply in a timely manner with, and cause all employees, agents, and contractors of Mortgagor and any other persons present on the Mortgaged Property to comply with the O&M Program. All costs of performance of Mortgagor's obligations under any O&M Program shall be paid by Mortgagor, and Mortgagee's out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Mortgagor's performance shall be paid by Mortgagor

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

upon demand by Mortgagee. Any such out-of-pocket costs of Mortgagee which Mortgagor fails to pay promptly shall become an additional part of the Indebtedness under Section 9.

(e) Mortgagor represents and warrants to Mortgagee that, except as previously disclosed by Mortgagor to Mortgagee in writing:

- (1) Mortgagor has not at any time caused or permitted any Prohibited Activities or Conditions.
- (2) To the best of Mortgagor's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed.
- (3) Except as disclosed in that certain Operations and Maintenance Agreement of even date herewith by and between Mortgagor and Mortgagee, the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Mortgagor's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property which has been previously disclosed by Mortgagor to Mortgagee in writing, that tank complies with all requirements of Hazardous Materials Laws.
- (4) Mortgagor has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Mortgagor has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect. No event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit.
- (5) There are no actions, suits, claims or proceedings pending or, to the best of Mortgagor's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

or relate to any Prohibited Activity or Condition.

- (6) Mortgagor has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Mortgagor that is adjacent to the Mortgaged Property. The representations and warranties in this Section 15 shall be continuing representations and warranties that shall be deemed to be made by Mortgagor throughout the term of the Loan evidenced by the Note, until the Indebtedness has been paid in full.

(f) Mortgagor shall promptly notify Mortgagee in writing of any and all of the following that may occur:

- (1) Mortgagor's discovery of any Prohibited Activity or Condition.
- (2) Mortgagor's receipt of or knowledge of any complaint, order, notice of violation or other communication from any Governmental Authority or other person with regard to present, or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Mortgagor that is adjacent to the Mortgaged Property.
- (3) Any representation or warranty in this Section 15 which becomes untrue at any time after the date of this Agreement.

Any such notice given by Mortgagor shall not relieve Mortgagor of, or result in a waiver of, any obligation under this Instrument, the Note, or any of the other Loan Documents.

(g) Mortgagor shall pay promptly the costs of any environmental inspections, tests or audits required by Mortgagee in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Mortgagee's consent to any Transfer under Section 17, or required by Mortgagee following a reasonable determination by Mortgagee that Prohibited Activities or Conditions may exist. Any such costs incurred by Mortgagee (including the fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

judicial or administrative process or otherwise) which Mortgagor fails to pay promptly shall become an additional part of the Indebtedness under Section 9.

(h) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("Remedial Work") is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, Mortgagor shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) 30 days after notice from Mortgagee demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete such work by the time required by applicable Hazardous Materials Law. If Mortgagor fails to begin on a timely basis or diligently prosecute any required Remedial Work, Mortgagee may, at its option, cause the Remedial Work to be completed, in which case Mortgagor shall reimburse Mortgagee on demand for the cost of doing so. Any reimbursement due from Mortgagor to Mortgagee shall become part of the Indebtedness under Section 9 of this Instrument.

(i) Mortgagor shall cooperate with inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

(j) Mortgagor shall defend and indemnify (1) Mortgagee, (2) any prior owner or holder of the Note, (3) the officers, directors, shareholders, employees and trustees of any of the foregoing, and (4) the heirs, legal representatives, successors and assigns of each of the foregoing (together, the "Indemnitees") against all proceedings claims, damages, penalties and costs (whether initiated or sought by any Governmental Authority or private parties), including fees and out of pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following:

- (1) Any breach of any representation or warranty of Mortgagor in this Section 15.
- (2) Any failure by Mortgagor to perform any of its obligations under this Section 15.
- (3) The existence or alleged existence of any Prohibited Activity or Condition.
- (4) The presence or alleged presence of Hazardous Materials in, on, or around under the

96779863

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Mortgaged Property or any property of Mortgagor that is adjacent to the Mortgaged Property, or

- (5) Actual or alleged violation of any Hazardous Materials Law.

(k) Counsel selected by Mortgagor to defend Indemnitees shall be subject to the approval of those Indemnitees. Notwithstanding anything contained herein, any Indemnitee may elect to defend any claim or legal or administrative proceeding at the Mortgagor's expense.

(l) Mortgagor shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "Claim") settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Mortgagee of a written release of those Indemnitees, satisfactory in form and substance to Mortgagee; or (2) may materially and adversely affect Mortgagee, as determined by Mortgagee in its sole discretion.

(m) The liability of Mortgagor to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Mortgagor or any guarantor to receive notice of or consideration for any of the following:

- (1) Any amendment or modification of any Loan Document.
- (2) Any extensions of time for performance required by any Loan Document.
- (3) The accuracy or inaccuracy of any representations and warranties made by Mortgagor under this Instrument or any other Loan Document.
- (4) The release of Mortgagor or any other person, by Mortgagee or by operation of law, from performance of any obligation under any Loan Document.
- (5) The release or substitution in whole or in part of any security for the Indebtedness.
- (6) Mortgagee's failure to properly perfect any lien or security interest given as security for the Indebtedness.

96719863

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(n) Mortgagor shall, at its own cost and expense, do all of the following:

- (1) Pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 15.
- (2) Reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 15.
- (3) Reimburse Indemnitees for any and all expenses, including fees and costs of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 18, or in monitoring and participating in any legal or administrative proceeding.

(o) In any circumstances in which the indemnity under this Section 15 applies, Mortgagee may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Mortgagee, with the prior written consent of Mortgagor (which shall not be unreasonably withheld, delayed or conditioned) may settle or compromise any action or legal or administrative proceeding. Mortgagor shall reimburse Mortgagee upon demand for all costs and expenses incurred by Mortgagee, including all costs of settlements entered into in good faith, and the fees and out of pocket expenses of such attorneys and consultants.

(p) The provisions of this Section 15 shall be in addition to any and all other obligations and liabilities that Mortgagor may have under the applicable law or under the other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 15 without regard to whether Mortgagee or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Mortgagor consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section 15 shall be joint and several. The obligation of Mortgagor to indemnify the Indemnitees under this Section 15 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## 16. CONDEMNATION.

(a) Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof; of all or any part of the Mortgaged Property, whether direct or indirect (a "Condemnation"). Mortgagor shall appear in and prosecute or defend any proceeding relating to any Condemnation unless otherwise directed by Mortgagee in writing. Mortgagor authorizes and appoints Mortgagee as attorney-in-fact for Mortgagor to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 16 shall require Mortgagee to incur any expense or take any action. Mortgagor hereby transfers and assigns to Mortgagee all right, title and interest of Mortgagor in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Subject to Mortgagor's right to apply such awards or proceeds as set forth in the Loan Agreement, Mortgagee may apply such awards or proceeds, after the deduction of Mortgagee's expenses incurred in the collection of such amounts, at Mortgagee's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Mortgagor. Unless Mortgagee otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 4 of this Instrument or any Collateral Agreement, or change the amount of such installments. Mortgagor agrees to execute such further evidence of assignment of any awards or proceeds as Mortgagee may require.

17. **TRANSFERS OF THE MORTGAGED PROPERTY OR BENEFICIAL INTERESTS IN Mortgagor.** No Transfer of any part of the Mortgaged Property or any beneficial interest of the Mortgagor shall be permitted without Mortgagee's prior written consent which may be withheld in Mortgagee's sole and absolute discretion.

18. **EVENTS OF DEFAULT.** The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

(a) any failure by Mortgagor to pay or deposit within ten (10) days after the same becomes due any amount required by the Note, this Instrument or any other Loan Document;

96779863

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

(b) any failure by Mortgagor to maintain the insurance coverage required under the Loan Agreement;

(c) any failure by Mortgagor to comply with the provisions of Section 29;

(d) fraud or material misrepresentation or material omission by Mortgagor, any of its officers, directors, trustees, general partners or managers or any guarantor in connection with (A) the application for or creation of the Indebtedness, (B) any financial statement, financial report, certification, or other report or information required under the Loan Agreement required to be provided to Mortgagee during the term of the Indebtedness, or (C) any request for Mortgagee's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;

(e) a failure of Mortgagor to comply with the provisions of Section 17;

(f) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Mortgagee's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Mortgagee's interest in the Mortgaged Property;

(g) any failure by Mortgagor to perform any of its obligations under this Instrument (other than those specified in Section 18 (a) through (f)), as and when required, which continues for a period of 30 days after notice of such failure by Mortgagee to Mortgagor. However, no such notice or grace period shall apply in the case of any such failure which could, in Mortgagee's judgment, absent immediate exercise by Mortgagee of a right or remedy under this Instrument, result in harm to Mortgagee, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(h) any failure by Mortgagor to perform any of its obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Loan Document;

(i) any exercise by the holder of any debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable;

(j) the Mortgaged Property becomes part of a bankrupt debtor's estate pursuant to any chapter of the Federal Bankruptcy Code or the Mortgaged Property otherwise becomes subject to any reorganization, receivership (other than a receivership proceeding instituted by Mortgagee) or insolvency proceeding or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

any similar proceeding pursuant to any federal, state or foreign law affecting debtor and creditor rights; or

(k) if any representation or warranty made by Mortgagor in that certain Loan Closing Certification executed in connection with the Loan is not true and correct, or upon Mortgagor's breach of any covenant made in that Loan Closing Certification and such breach remains uncured for a period thirty (30) days after Mortgagee gives notice of such breach to Mortgagor.

## 19. REMEDIES.

(a) Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Indebtedness shall, at the option of Mortgagee, immediately become due and payable without notice or demand, time being of the essence of this Instrument, and no omission on the part of Mortgagee to exercise such option when entitled to do so shall be construed as a waiver of such right.

## (b) Right to Enter and Take Possession.

(1) If an Event of Default shall have occurred and is continuing, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Mortgaged Property and, if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Mortgaged Property without the appointment of a receiver or an application therefor, and may exclude Mortgagor and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Mortgagor relating thereto;

(2) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Mortgagee, Mortgagee may obtain a judgment or decree conferring upon Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Mortgaged Property to Mortgagee. Mortgagor will pay to Mortgagee, upon demand, all expenses of obtaining such judgment or decree, including costs and expense incurred by Mortgagee, its attorneys and agents, and all such expenses and costs shall, until paid, become part of the Indebtedness and shall be secured by this Instrument;

(3) Upon every such entering or taking of possession, Mortgagee may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional Fixtures, Personalty and Equipment; (ii) insure or keep the Mortgaged Property insured; (iii) manage and

96779863

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

operate the Mortgaged Property and exercise all of the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name; or and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Mortgagee, all as Mortgagee from time to time may determine to be in its best interest. Mortgagee may collect and receive all the Rents, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance deemed necessary by Mortgagor; (D) such taxes, assessments and other similar charges as Mortgagee may at its option pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the actual fees, expenses and disbursements of the attorneys and agents of Mortgagee, Mortgagee shall apply the remainder of the monies and proceeds so received by Mortgagee, first, to the payment of accrued interest; second, to the payment of Imposition Deposits and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal and any other unpaid Indebtedness then due. Anything in this Section to the contrary notwithstanding, Mortgagee shall not incur any liability as a result of any exercise by Mortgagee of its rights under this Instrument, and Mortgagee shall be liable to account only for the Rents actually received by Mortgagee;

(4) If an Event of Default shall exist, Mortgagee may require that Mortgagor cause all of its Accounts to be paid to one or more deposit accounts with Mortgagee, or at Mortgagee's option, with another financial institution approved by Mortgagee. Mortgagor assigns and grants to Mortgagee a security interest in, pledge of and right of setoff against all moneys from time to time held in such deposit accounts. Mortgagor agrees to promptly notify all of its account debtors, including the Medicaid and Medicare agencies and other account debtors pursuant to all Reimbursement Contracts, to the extent permitted under applicable law, to make payments to one or more such deposit accounts upon Mortgagee's request and as designated by Mortgagee, and Mortgagor agrees to provide any necessary endorsements to checks, drafts and other forms of payment so that such payments will be properly deposited in such accounts. Mortgagee may require that the deposit accounts be established so as to comply with any applicable Medicaid, Medicare and other requirements applicable to payments of any accounts receivable. Mortgagee may cause moneys to be withdrawn from such deposit accounts and applied to the Indebtedness in such order as Mortgagee may elect, whether or not then due. Mortgagor appoints Mortgagee as Mortgagor's attorney-in-fact, which appointment is coupled with an interest and is irrevocable, to provide any notice, endorse any check, draft or other payment for deposit, or take any other action

96779863

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

which Mortgagor agrees to undertake in accordance with this Section. Mortgagee shall not be liable for failure to collect or to enforce any Accounts or for any action or mission on the part of Mortgagee, its officers, agents and employees in collecting or enforcing such Accounts. The provisions of this subsection (iv) are subject to the rights of any holder of a lien on Accounts that is expressly permitted by Section 6.2 of the Loan Agreement.

(5) Whenever all the Indebtedness shall have been paid and all Events of Default shall have been cured, Mortgagee shall surrender possession of the Mortgaged Property to Mortgagor, its successors and/or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

(c) Performance by Mortgagee. Upon the occurrence of an Event of Default, Mortgagee may, at its sole option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Mortgagee in connection therewith, with interest thereon at the Default Rate (as defined in the Note) or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Mortgagee. Notwithstanding anything to the contrary herein, Mortgagee shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

(d) Receiver. If any Event of Default shall have occurred and be continuing, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the sufficiency or value of any security for the Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Nursing Home and to collect and apply the Rents. The receiver shall have all the rights and powers permitted under the laws of the State wherein the Law is situated. Mortgagor will pay unto Mortgagee upon demand all expenses, including receiver's fees, actual attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section, and upon any Mortgagor's failure to pay the same, any such amounts shall be added to the Indebtedness and shall be secured by this Instrument.

(e) Mortgagee's Power of Enforcement. If an Event of Default shall have occurred and be continuing, the Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term thereof or any other right, (b) to foreclose this Instrument and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by applicable Illinois law, and (c) to pursue any other remedy available to it, all as the Mortgagee shall deem most effectual for such purposes. The Mortgagee shall take

96779863

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Mortgagee may determine.

(f) Purchase by Mortgagee. Upon any foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price.

(g) Application of Proceeds of Sale. In the event of a foreclosure or other sale of all or any portion of the Mortgaged Property, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including actual attorney's fees and expenses (and attorney's fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, impositions and charges, including utility charges and any other amounts advanced by Mortgagee hereunder, and interest thereon; then to payment of the Indebtedness in such order of priority as Mortgagee shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Mortgagor, or to the person or entity lawfully entitled thereto.

(h) Mortgagor as Tenant Holding Over. In the event of any such foreclosure sale, Mortgagor (if Mortgagor shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable thereto.

(i) Waiver of Appraisal, Valuation, Etc. Mortgagor agrees, to the full extent permitted by law, that in case of an Event of Default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will assert, claim or seek to take advantage of any appraisal, valuation, stay, homestead, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement of foreclosure of this Instrument, or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale.

(j) Discontinuance of Proceedings. In case Mortgagee shall have proceeded to enforce any right, power or remedy under this Instrument by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred.

(k) Waiver.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(1) No delay or omission by Mortgagee or by any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Instrument to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. No consent or waiver expressed or implied by Mortgagee to or of any breach or default by Mortgagor in the performance of the obligations of Mortgagor hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Mortgagor hereunder. Failure on the part of Mortgagee to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies of Mortgagee hereunder.

(2) No act or omission by Mortgagee shall release, discharge, modify, change or otherwise affect the original liability under the Note, this Instrument, other Loan Documents or any other obligation of Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then existing or of any subsequent default, nor alter the lien of this Instrument, except as expressly provided in an instrument or instruments executed by Mortgagee. Without limiting the generality of the foregoing, Mortgagee may (i) grant forbearance or an extension of time for the payment of all or any portion of the Indebtedness; (ii) take other or additional security for the payment of any of the Loan Obligations; (iii) waive or fail to exercise any right granted herein, in the Note or in other Loan Documents; (iv) release any part of the Mortgaged Property from the security interest or lien of this Instrument or otherwise change any of the terms, covenants, conditions or agreements of the Note, this Instrument or other Loan Documents; (v) consent to the filing of any map, plat or replat affecting the Land; (vi) consent to the granting of any easement or other right affecting the Mortgaged Property; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to the Note, this Instrument, the other Loan Documents, the Mortgaged Property or any document or instrument evidencing, securing or in any way related to the Instrument, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Mortgagee from exercising any such right, power or privilege with respect to the lien of this Instrument. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Mortgagee, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with respect to the Mortgaged Property or the

96779863

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Indebtedness, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings of Mortgagor, any guarantor of the Loan Obligations or others.

(3) Mortgagor waives and relinquishes any and all rights it may have, whether at law or equity, to require Mortgagee to proceed to enforce or exercise any rights, powers and remedies it may have under the Loan Documents in any particular manner, in any particular order, or in any particular state or other jurisdiction. Mortgagor expressly waives and relinquishes any and all rights and remedies that Mortgagor may have or be able to assert by reason of the laws of the state of jurisdiction pertaining to the rights and remedies of sureties.

Mortgagor makes these arrangements, waivers and relinquishments knowingly and as a material inducement to Mortgagee in making the Loan, after consulting with and considering the advice of independent legal counsel selected by Mortgagor.

(l) Suits to Protect the Mortgaged Property. Mortgagee shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or constitute an Event of Default under this Instrument; (b) to preserve or protect its interest in the Mortgaged Property and in the Rents arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would materially impair the security hereunder or be prejudicial to the interest of Mortgagee.

(m) Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or its properties, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceedings for the entire amount due and payable by Mortgagor under this Instrument at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

20. **REMEDIES CUMULATIVE.** Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

## 21. FORBEARANCE.

(a) Mortgagee may agree with Mortgagor, from time to time, at Mortgagee's option and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of any guarantor or other third party obligor, extend the time for payment of all or any part of the Indebtedness, reduce the payments due under this Instrument, the Note, or any other Loan Document, release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document, accept a renewal of the Note, modify the terms and time of payment of the Indebtedness, join in any extension or subordination agreement, release any Mortgaged Property, take or release other or additional security, modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note, or otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Mortgagee in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Mortgagee of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Mortgagee's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Mortgagee of any security for the Indebtedness shall not constitute an election by Mortgagee of remedies so as to preclude the exercise of any other right available to Mortgagee. Mortgagee's receipt of any insurance and/or condemnation proceeds shall not operate to cure or waive any Event of default.

22. **LOAN CHARGES.** If any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Mortgagor is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Mortgagee in excess of the permitted amounts shall be applied by Mortgagee to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term

96779863

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

23. **WAIVER OF STATUTE OF LIMITATIONS.** Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Loan Document.

24. **WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interests in the Mortgaged Property held by Mortgagor or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Note, any other Loan Document or applicable law. Mortgagee shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Mortgagor and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

25. **FURTHER ASSURANCES.** Mortgagor shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Mortgagee may require from time to time in order to better assure, grant, and convey to Mortgagee the rights intended to be granted, now or in the future, to Mortgagee under this Instrument and the Loan Documents.

26. **ESTOPPEL CERTIFICATE.** Within 10 days after a request from Mortgagee, Mortgagor shall deliver to Mortgagee a written statement, signed and acknowledged by Mortgagor, certifying to Mortgagee or any person designated by Mortgagee, as of the date of such statement, (i) that the Loan Documents are unmodified and in full force and effect (or, if there have been modification, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Mortgagor is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if the Mortgagor is in default, describing such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Mortgagor against the enforcement of any right or remedy of

96779863

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Mortgagee under the Loan Documents; and (vi) any additional facts requested by Mortgagee.

## 27. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Mortgaged Property is located (the "Property Jurisdiction").

(b) Mortgagor consents to the exclusive jurisdiction of any and all state and federal courts with jurisdiction in the Property Jurisdiction over Mortgagor and Mortgagor's assets. Mortgagor agrees that its assets shall be used first to satisfy all claims of creditors organized or domiciled in the United States and that no assets of Mortgagor in the United States shall be considered part of any foreign bankruptcy estate.

(c) Mortgagor agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Mortgagor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

## 28. NOTICE.

(a) All notices, demands and other communications ("notice") under or concerning this Instrument shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed given on the earliest to occur of (1) the date when the notice is received by the addressee; (2) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 28, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Mortgagee's Pennsylvania office is not open for business.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 28. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 28, that it will acknowledge, in writing, the receipt of any notice upon

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 28 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any notice under the Note and any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 28.

29. **SINGLE ASSET MORTGAGOR.** Until the Indebtedness is paid in full, Mortgagor (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

30. **INDEMNIFICATION.** MORTGAGOR SHALL PROTECT, DEFEND, INDEMNIFY AND SAVE HARMLESS MORTGAGEE FROM AND AGAINST ALL LIABILITIES, OBLIGATIONS, CLAIMS, DAMAGES, PENALTIES, CAUSES OF ACTION, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND EXPENSES), IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST MORTGAGEE BY REASON OF (A) OWNERSHIP OF THIS INSTRUMENT, THE PROPERTY OR ANY INTEREST THEREIN OR RECEIPT OF ANY RENTS, (B) ANY ACCIDENT, INJURY TO OR DEATH OF PERSONS OR LOSS OF OR DAMAGE TO PROPERTY OCCURRING IN, ON OR ABOUT THE PROPERTY OR ANY PART THEREOF OR ON THE ADJOINING SIDEWALKS, CURBS, ADJACENT PROPERTY OR ADJACENT PARKING AREAS, STREETS OR WAYS; (C) ANY USE, NONUSE OR CONDITION IN, ON OR ABOUT THE PROPERTY OR ANY PART THEREOF OR ON THE ADJOINING SIDEWALKS, CURBS, ADJACENT PROPERTY OR ADJACENT PARKING AREAS, STREETS OR WAYS; (D) ANY FAILURE ON THE PART OF MORTGAGOR TO PERFORM OR COMPLY WITH ANY OF THE TERMS OF THIS INSTRUMENT; (E) ANY CLAIMS BY ANY BROKER, PERSON OR ENTITY CLAIMING TO HAVE PARTICIPATED IN ARRANGING THE MAKING OF THE LOAN EVIDENCED BY THE NOTE; OR (F) PERFORMANCE OF ANY LABOR OR SERVICES OR THE FURNISHING OF ANY MATERIALS OR OTHER PROPERTY IN RESPECT OF THE PROPERTY OR ANY PART THEREOF, OR (G) THE FAILURE OF ANY PERSON TO FILE TIMELY WITH THE INTERNAL REVENUE SERVICE AN ACCURATE FORM 1099-B, STATEMENT FOR RECIPIENTS OF PROCEEDS FROM REAL ESTATE, BROKER AND BARTER EXCHANGE TRANSACTIONS, WHICH MAY BE REQUIRED IN CONNECTION WITH THE INSTRUMENT, OR TO SUPPLY A COPY THEREOF IN A TIMELY FASHION TO THE RECIPIENT OF THE PROCEEDS OF THE TRANSACTION IN CONNECTION WITH WHICH THIS INSTRUMENT IS MADE. ANY AMOUNTS PAYABLE TO MORTGAGEE BY REASON OF THE APPLICATION OF THIS SECTION 30, SHALL BECOME IMMEDIATELY DUE AND PAYABLE AND SHALL BEAR INTEREST AT THE RATE PROVIDED FOR IN THE NOTE FROM THE DATE LOSS OR DAMAGE IS SUSTAINED BY MORTGAGEE UNTIL PAID. THE OBLIGATIONS AND LIABILITIES OF MORTGAGOR UNDER THIS SECTION 30 SHALL SURVIVE ANY TERMINATION, SATISFACTION, ASSIGNMENT, ENTRY OF A JUDGMENT OF

96-779863

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

FORECLOSURE OR EXERCISE OF A POWER OF SALE OR DELIVERY OF A DEED IN LIEU OF FORECLOSURE OF THE INSTRUMENT.

31. **JOINT AND SEVERAL LIABILITY.** If more than one person or entity signs this Instrument as Mortgagor, the obligations of such persons and entities shall be joint and several. In exercising any of its rights and taking any actions with respect to this Instrument.

32. **RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.** The relationship between Mortgagee and Mortgagor shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Mortgagee and Mortgagor. No creditor of any party to this Instrument and no other person shall be a third party beneficiary of this Instrument or any other Loan Document.

33. **SEVERABILITY; AMENDMENTS.** The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

34. **MISCELLANEOUS PROVISIONS.** The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

35. **DISCLOSURE OF INFORMATION.** Mortgagee may furnish financial information regarding Mortgagor or the Mortgaged Property to third parties with an existing or prospective interest in the enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to credit rating agencies. Mortgagor irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

36. **WAIVER OF TRIAL BY JURY. MORTGAGOR AND MORTGAGEE EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH**

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

RESPECT TO ANY ISSUE THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE EXIST. MORTGAGOR AND MORTGAGEE ARE AUTHORIZED TO SUBMIT THIS INSTRUMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES TO ANY LOAN DOCUMENT, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF MORTGAGOR'S AND MORTGAGEE'S WAIVER OF THE RIGHT TO JURY TRIAL. FURTHER, MORTGAGOR AND MORTGAGEE EACH CERTIFIES THAT NEITHER MORTGAGOR'S NOR MORTGAGEE'S REPRESENTATIVES OR AGENTS HAVE REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ENFORCEMENT OF THIS WAIVER WILL NOT BE SOUGHT.

37. WAIVER OF AUTOMATIC STAY. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, MORTGAGOR HEREBY AGREES THAT, IN CONSIDERATION OF MORTGAGEE'S AGREEMENT TO MAKE THE LOAN AND IN RECOGNITION THAT THE FOLLOWING COVENANT IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, IN THE EVENT THAT MORTGAGOR SHALL (I) FILE WITH ANY BANKRUPTCY COURT OF COMPETENT JURISDICTION OR BE THE SUBJECT OF ANY PETITION UNDER ANY SECTION OR CHAPTER OF TITLE 11 OF THE UNITED STATES CODE, AS AMENDED ("BANKRUPTCY CODE"), OR SIMILAR LAW OR STATUTE; (II) BE THE SUBJECT OF ANY ORDER FOR RELIEF ISSUED UNDER THE BANKRUPTCY CODE OR SIMILAR LAW OR STATUTE; (III) FILE OR BE THE SUBJECT OF ANY PETITION SEEKING ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY, OR OTHER RELIEF FOR DEBTORS; (IV) HAVE SOUGHT OR CONSENTED TO OR ACQUIESCED IN THE APPOINTMENT OF ANY TRUSTEE, RECEIVER, CONSERVATOR, OR LIQUIDATOR; OR (V) BE THE SUBJECT OF AN ORDER, JUDGEMENT OR DECREE ENTERED BY ANY COURT OF COMPETENT JURISDICTION APPROVING A PETITION FILED AGAINST MORTGAGOR FOR ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY OR RELIEF FOR DEBTORS, THEN, SUBJECT TO COURT APPROVAL, MORTGAGEE SHALL THEREUPON BE ENTITLED AND MORTGAGOR HEREBY IRREVOCABLY CONSENTS TO, AND WILL NOT CONTEST, AND AGREES TO STIPULATE TO RELIEF FROM ANY AUTOMATIC STAY OR OTHER INJUNCTION IMPOSED BY SECTION 362 OF THE BANKRUPTCY CODE, OR SIMILAR LAW OR STATUTE (INCLUDING, WITHOUT LIMITATION, RELIEF FROM ANY EXCLUSIVE PERIOD SET FORTH IN SECTION 1121 OF THE BANKRUPTCY CODE) OR OTHERWISE, ON OR AGAINST THE EXERCISE OF THE RIGHTS AND REMEDIES OTHERWISE AVAILABLE TO MORTGAGEE AS PROVIDED IN THE LOAN DOCUMENTS, AND AS OTHERWISE PROVIDED BY LAW, AND MORTGAGOR HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO OBJECT TO SUCH RELIEF.

38. SUCCESSORS AND ASSIGNS BOUND. This Instrument shall bind, and the rights granted by this Instrument shall inure to,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY OR RELIEF FOR DEBTORS, THEN, SUBJECT TO COURT APPROVAL, MORTGAGEE SHALL THEREUPON BE ENTITLED AND MORTGAGOR HEREBY IRREVOCABLY CONSENTS TO, AND WILL NOT CONTEST, AND AGREES TO STIPULATE TO RELIEF FROM ANY AUTOMATIC STAY OR OTHER INJUNCTION IMPOSED BY SECTION 362 OF THE BANKRUPTCY CODE, OR SIMILAR LAW OR STATUTE (INCLUDING, WITHOUT LIMITATION, RELIEF FROM ANY EXCLUSIVE PERIOD SET FORTH IN SECTION 1121 OF THE BANKRUPTCY CODE) OR OTHERWISE, ON OR AGAINST THE EXERCISE OF THE RIGHTS AND REMEDIES OTHERWISE AVAILABLE TO MORTGAGEE AS PROVIDED IN THE LOAN DOCUMENTS, AND AS OTHERWISE PROVIDED BY LAW, AND MORTGAGOR HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO OBJECT TO SUCH RELIEF.

38. SUCCESSORS AND ASSIGNS BOUND. This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Mortgagee and Mortgagor.

## MORTGAGOR:

WITNESS:

BELHAVEN CONVALESCENT CENTER, INC.,  
a Maryland not-for-profit  
corporation

James A. McLauchlin  
James A. McLauchlin  
[Print Name]

By:

Richard Lopez  
Richard Lopez, President

## MORTGAGEE:

WITNESS:

GMAC COMMERCIAL MORTGAGE  
CORPORATION, a California  
corporation

W. E. Shine

By:

W. E. Shine [Seal]  
William E Shine  
Executive Vice President

90779863

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
COUNTY OF COOK )

I, a Notary Public of the County and State aforesaid, certify that Richard Lopez personally appeared before me this day and acknowledged that he is the President of Belhaven Convalescent Center, Inc., a Maryland corporation and that by authority duly given and as an act of said corporation, the foregoing instrument was signed and sealed by him in the name of and on behalf of said corporation.

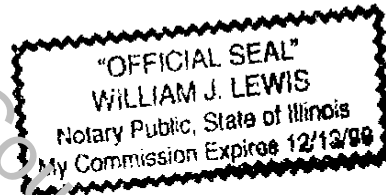
Witness my hand and notarial stamp or seal this 10<sup>th</sup> day of October, 1996.

William J. Lewis  
Notary Public

[Stamp or Seal]

My Commission Expires:

\_\_\_\_\_



STATE OF ILLINOIS  
COUNTY OF COOK

I, a Notary Public of the County and State aforesaid, certify that William E. Shine personally appeared before me this day and acknowledged that he is an Executive Vice President of GMAC Commercial Mortgage Corporation, a California corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed and sealed by him, as Executive Vice President, in the name of and on behalf of the corporation.

Witness my hand and notarial stamp or seal this 11<sup>th</sup> day of October, 1996.

William E. Shine  
Notary Public

[Stamp or Seal]

My Commission Expires:

April 14, 2001

96719863

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT "A"

### LEGAL DESCRIPTION

LOTS 3 TO 9, BOTH INCLUSIVE AND LOTS 25 TO 33, BOTH INCLUSIVE, ALL IN DAVOL'S SUBDIVISION OF LOTS 1 TO 11 IN BLOCK 'F' IN MORGAN PARK RECORDED AS DOCUMENT 967566 IN SECTION 19, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART DESCRIBED AS FOLLOWS:

THAT PART OF SAID LOT 25 TOGETHER WITH THE SOUTH 15.08 FEET OF LOT 26 LYING WEST OF A LINE DRAWN 71.31 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 25 AND 80.75 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 25 AS MEASURED ALONG THE NORTH AND SOUTH LINES OF SAID LOT 25; SAID LINE BEING PERPENDICULAR TO THE SOUTH AND NORTH LINES OF SAID LOT 25), ALL IN COOK COUNTY, ILLINOIS

25-19-110-040  
11401 S. OAKLEY AVE  
CHICAGO IL

Property of Cook County Clerk's Office

06779863

UNOFFICIAL COPY

Property of Cook County Clerk's Office